

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
(916) 274-5721  
FAX (916) 274-5743  
Website address [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**

September 20, 2007  
Costa Mesa, California

**I. PUBLIC MEETING****CALL TO ORDER AND INTRODUCTIONS**

Chair MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:0 a.m., September 20, 2007, in the Costa Mesa City Council Chambers, 77 Fair Drive, Costa Mesa, California

**A. ATTENDANCE****Board Members Present**

Chairman John MacLeod  
Jonathan Frisch, Ph.D.  
Jack Kastorff  
Willie Washington

**Board Members Absent**

Bill Jackson  
Jose Moreno  
Steve Rank

**Board Staff**

Michael Manieri, Interim Executive Officer  
Engineer  
Tom Mitchell, Senior Industrial Hygienist  
Bernie Osburn, Staff Services Analyst  
Christina Witte, Executive Secretary

**Division of Occupational Safety and Health**

Larry McCune, Principal Industrial Safety  
  
Vicky Heza, Deputy Safety Chief, Compliance Unit

**Others present**

Alex Mercier, Lucas & Mercier Construction  
Kevin Bland, RCA  
Carlos Morales, CALPUSC  
Marc, PMA  
Jeff Tanenbaum, Nixon Peabody  
Laura Sheppard, Center for Public Interest Law

Steve Johnson, Assoc. Roofing Contractors  
Kevin Powell, SSA Marine  
Lynne Formigli, CTA  
V Heza, CAL/OSHA  
Len MiGill, Fleefwood Enterprises  
Richard Grossman, Product Safety Engineering

**B. OPENING COMMENTS**

The people listed below spoke in support of the adoption of Title 8, California Code of Regulations, Section 1704, Pneumatically-Driven Nailers and Staplers as revised, stating that the revised proposal is clearer and more easily enforceable than the version presented for Public Hearing in June.

- Bruce Wick, Director of Risk Management, California Professional Association of Specialty Contractors

- Carlos Morales, Safety Director, DRI Companies
- Steve Johnson, Associated Roofing Contractors of the Bay Area Counties
- Alex Mercier, Director of Safety & Fall Protection, Lucas & Mercier
- Kevin Bland, representing the California Framing Contractors Association and the Residential Contractors Association.

Richard Grossman, author of Petition File Number 495, thanked the Board for considering his petition, and he offered his services during the advisory committee process.

Julio Petrini, co-author of Petition File Number 494, thanked the Board for considering his petition, and he asked whether the restriction would apply to all riding lawn mowers. He also asked about the proposed timetable, and whether the standard, if adopted, would be national or state-wide, and whether it would apply to employers or employees.

Chair MacLeod responded that the standard would apply strictly to California. He asked Mr. Manieri for an approximate time frame for the advisory committee, and Mr. Manieri stated that it could be convened within the first quarter of 2008, and that Mr. and Mrs. Petrini would be invited to attend and discuss the points raised in his comments today.

Mr. Wick also expressed support for the adoption of Title 8, California Code of Regulations, Section 4324, Dust Collection Systems for Woodworking Machines and Equipment.

Mark MacDonald, Vice President for Safety and Accident Prevention for the Pacific Maritime Association (PMA), read into the record written comments regarding the PMA's opposition to Petition 495, stating that rubber-tired gantry cranes (RTGs) are the subject of a lawsuit in which the Petitioner is an expert witness for the plaintiff. He asked that if an advisory committee is convened, it be done so after the conclusion of the litigation, noting that the trial is set to begin on November 5, 2007.

Mr. McCune stated that the Division evaluated this petition and found that in previous rulemakings, standards for RTGs were omitted. He stated that the Division's feeling is that there is need for improvement of the RTG standards. There is no applicable ANSI standard on which to rely.

## C. ADJORNMENT

Chairman MacLeod adjourned the Public Meeting at 10:25 a.m.

## II. **BUSINESS MEETING**

Chair MacLeod called the Business Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:25 a.m., September 20, 2007, in the Costa Mesa City Council Chambers, 77 Fair Drive, Costa Mesa, California.

### A. **PROPOSED SAFETY ORDERS ADOPTION**

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**  
Chapter 4, Subchapter 4, Article 28  
Section 1704  
**Pneumatically-Driven Nailers and Staplers**

(Heard at the June 21, 2007, Public Hearing)

Mr. Manieri summarized the purpose and history of the proposal, noting that a 15-day notice had not resulted in further public comment. He stated that the proposal was now ready for the Board's adoption.

MOTION

A motion was made by Mr. Washington and seconded by Mr. Kastorff to adopt the proposed safety order.

A roll call was taken, and all members present voted "aye." The motion passed.

2.     TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
Chapter 4, Subchapter 7, Article 7  
New Section 3324  
**Horizontal Sliding Gates**  
(Hearing at the May 17, 2007, Public Hearing)

Mr. Manieri summarized the purpose and history of the proposal, noting that a 15-day notice had not resulted in further public comment. He stated that the proposal was now ready for the Board's adoption.

MOTION

A motion was made by Dr. Frisch and seconded by Mr. Washington to adopt the proposed safety order.

A roll call was taken, and all members present voted "aye." The motion passed.

3.     TITLE 8:     **CONSTRUCTION SAFETY ORDERS**  
Chapter 4, Subchapter 4, Article 4  
Section 1532.2  
**GENERAL INDUSTRY SAFETY ORDERS**  
Chapter 4, Subchapter 7, Article 110  
Sections 5203 and 5206  
**SHIP BUILDING, SHIP REPAIRING, AND SHIP  
BREAKING SAFETY ORDERS**  
Chapter 4, Subchapter 18, Article 4  
Section 8359  
**Carcinogen Report of Use Requirements for  
Chromium VI**  
(Hearing at the August 16, 2007, Public Hearing)

Mr. Mitchell summarized the history and purpose of the proposal, stating that no public comment had been received and that the proposal was now ready for adoption by the Board.

**MOTION**

A motion was made by Dr. Frisch and seconded by Mr. Washington to adopt the proposed safety order.

A roll call was taken, and all members present voted "aye." The motion passed.

4. **TITLE 8:**      **GENERAL INDUSTRY SAFETY ORDERS**  
Chapter 4, Subchapter 7, Article 59  
Section 4324  
**Dust Collection Systems for Woodworking Machines and Equipment**  
(Heard at the December 14, 2006, Public Hearing)

Mr. Mitchell summarized the history and purpose of the proposal, stating that a second 15-day Notice of Proposed Modification had resulted in no further public comment. He stated that the proposal was now ready for the Board's adoption.

**MOTION**

A motion was made by Mr. Washington and seconded by Mr. Kastorff to adopt the proposed safety order.

A roll call was taken, and all members present voted "aye." The motion passed.

**B.      PROPOSED PETITION DECISIONS FOR ADOPTION**

1.      Petition File No. 494  
Submitted by Julio and Madeline Petrini

Mr. Manieri summarized the reason for and history of the petition, noting that both Board staff and Division evaluations recommended approval of the petition to the extent that an advisory committee be convened.

**MOTION**

A motion was made by Dr. Frisch and seconded by Mr. Washington to adopt the proposed petition decision.

Mr. Washington asked whether any other state has standards regarding roll-over protective systems (ROPS) for riding lawn mowers. Mr. Manieri responded in the negative.

Dr. Frisch asked how long riding lawn mowers typically are in use and whether older equipment can be retrofitted, expressing his concern that older equipment might be "grandfathered in" should a standard be adopted. Mr. Manieri responded that the advisory committee would certainly consider existing equipment, stating that riding lawn mowers can remain in service for 20 years or more.

A roll call was taken, and all members present voted "aye." The motion passed.

2. Petition File No. 495  
Submitted by Richard Grossman

Mr. Manieri summarized the reason for and history of the petition, noting that both Board staff and Division evaluations recommended approval of the petition to the extent that an advisory committee be convened.

MOTION

A motion was made by Dr. Frisch and seconded by Mr. Kastorff to adopt the proposed petition decision.

Mr. Washington asked whether the advisory committee would be convened after the trial in the pending litigation had been concluded, and Mr. Manieri responded in the affirmative.

Chair MacLeod stated that the Board's responsibility to consider the safety concerns of the petition was separate from the court's authority and responsibility in any pending litigation.

Dr. Frisch stated that his concern with the trial date of the pending litigation had less to do with when to convene an advisory committee as it did with the six-month time period allotted to the Board to adopt petition decisions.

A roll call was taken, and all members present voted "aye." The motion passed.

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar.

Mr. Manieri briefly summarized the 51 proposed variances on the consent calendar, stating that evidentiary hearings had been held for each, and recommending that the Board adopt the proposed decisions.

MOTION

Dr. Frisch asked that Variance File Number 05-V-024, Fleetwood Motor Homes of California

be removed from the consent calendar and considered as a separate item.

A motion was made by Mr. Kastorff and seconded by Mr. Washington to adopt the consent calendar as modified.

A roll call was taken, and all members present voted "aye." The motion passed.

A motion was made by Dr. Frisch and seconded by Mr. Kastorff to adopt the proposed decision for Variance File Number 05-V-024.

Dr. Frisch stated that there were two issues to which he wished to draw the Board's attention before any vote was taken. He stated that this had been a very difficult variance, with three or four half- or full-day evidentiary hearings being held. He stated that the solution being offered in the proposed decision is not ideal, but it is reflective of an experimental variance that the Division has had with Fleetwood for some time. He referred to Labor Code Section 143(b), which indicates that the Board has the right to revoke the variance at a later time should it become dissatisfied with how it is working. He further stated that a condition had been added to the proposed decision, at his request, that the applicant notify the Board of any citations issued by the Division pertaining to its Riverside facilities within 30 days of issuance.

Chair MacLeod stated that the issue addressed in this variance is rather complicated. He suggested that the decision be carried over until the next Board meeting in October to give him and the other Board members some time to go over the decision.

As a result of the Chair's suggestion, Dr. Frisch withdrew his motion to adopt the proposed variance decision in favor of carrying it over until the next Board meeting in October.

## C. OTHER

### 1. Enforcement Update

Regarding enforcement of the heat illness prevention standard, Ms. Heza stated that a total of 480 inspections have been conducted during calendar year 2007. Of those 480 inspections, 294 citations for violation of Section 3395 have been issued to date. Ms. Heza indicated that the number of citations is expected to increase once the investigations have been completed. 122 citations have been issued for lack of a written program, seven percent of which were classified as serious. In addition, 96 citations have been issued for lack of employee training, 27% of which have been classified as serious; 33 citations have been issued for lack of water, 36% of which have been classified as serious; 22 citations have been issued for deficiencies in supervisor training, 23% of which were classified as serious; and 21 citations were issued for violations or deficiencies of the provision of shade requirement, 62% of which were classified as serious. Ms Heza indicated that Cal-OSHA plans to formalize the reporting of violations of Section 3395, including streamlining the questionnaire used to gather data used in the annual Heat Illness Prevention studies performed by Amalia Neidhardt and Dr. Prudhomme.

Ms. Heza also stated that, after a review of inspections conducted after the adoption of the crane operator certification standards, it is too early to identify a discernible trend that might be attributable to the required certification of crane operators.

Dr. Frisch asked whether Ms. Heza was able to determine a reason for the number of citations issued to employers for a lack of water in violation of the heat illness prevention standard. He asked whether it was ignorance of the standard, a failure to understand, or deliberate malfeasance on the part of the employers. Ms. Heza responded that it was difficult to determine, as she had not been the person issuing the citations; however, it was her belief that it was some combination of all the reasons listed by Dr. Frisch. She stated that, as a part of the Special Emphasis Program, the Division would direct its regular enforcement offices to conduct regular, targeted inspections in the agricultural and construction industries on a monthly basis.

Chair MacLeod asked whether the Division was targeting the agricultural and construction industries when there is danger of extremely high temperatures. Ms. Heza responded in the affirmative.

Dr. Frisch asked that Ms. Heza update the Board on “repeat offenders” of the heat illness prevention standard, and Ms. Heza agreed to do so.

### 2. Legislative Update

Mr. Manieri stated that a written report had been provided to the Board members in their materials, and he summarized changes in the status of the bills since the time the report had been written.

Dr. Frisch asked whether the Board would receive any financial assistance should AB 1393 pass. Mr. Manieri responded that he was uncertain but he would find out.

Dr. Frisch asked whether the Board would receive any authority over amusement rides should SB 783 be signed. Mr. Manieri responded that the Division would probably have a better idea, but expressed his belief that the Division would continue to develop the standards regarding elevators and amusement rides, and adoption of those packages would rest with the Board. He did not expect any change in the Board's authority based on the passage of SB 783.

### 3. Executive Officer's Report

Mr. Manieri summarized the Calendar of Activities, stating among other things, that staff had just concluded its advisory committee meeting regarding the Title 8 reform project. The Board would be receiving an update on the outcome of that advisory committee meeting at a future meeting. He also indicated that there were a number of prospective advisory committee meetings likely to be held in 2007, on subjects including but not limited to construction hoists, fixed ladders, and an update to the Title 8 air compressor standards.

### 4. Future Agenda Items

#### D. CLOSED SESSION (Not held, as explained below)

Chair MacLeod expressed his belief that there was nothing to be discussed at the current time that required a closed session, and asked that the discussion be held in open session; the Board members agreed to this suggestion.

Chair MacLeod stated that although David Beales had accepted another position, which he started on September 17, Mr. Beales had asked to return to the Board, and he would be doing so effective September 24.

He further stated that because Marley Hart had accepted a limited term assignment with another agency, the Staff Services Manager vacancy had been advertised as a limited term vacancy. However, Ms. Hart's position was scheduled to be made permanent in the near future, and thus the Board's vacancy announcement would be modified to reflect a permanent position rather than a limited term.

He expressed pride and gratitude for the manner in which the staff had met the challenges during this period, stating that they had performed "yeoman's work" in carrying on the day-to-day business of the Board without interruption.

Chair MacLeod indicated that recruiting for a new Executive Officer had begun on or about August 10, 2007, with a final file date of August 29, 2007, with the expect that the hiring committee would meet and winnow the candidate pool on September 6, 2007. However, when the filing deadline arrived, the panel did not feel that there was an adequate candidate pool to move forward. They decided, therefore, to extend the filing



date until September 24, and broaden the scope of the advertisement. The committee will meet on September 27 in order to determine who to interview and when.

ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 11:30 a.m.